Phillips™
FOODS, INC. & SEAFOOD RESTAURANTS

December 28, 2004

VIA FACSIMILE
202-720-3499

Country of Origin Labeling Program
Room 2092-S
Agricultural Marketing Service
USDA STOP 0249
1400 Independence Avenue, SW
Washington, DC 20250-0249

Re: Docket Number LS-03-04; Interim Final Rule

To Whom It May Concern:

I am writing on behalf of Phillips Foods, Inc., to provide comments on the Interim Final Rule ("Rule") implementing the country of origin labeling provisions in the Farm Security and Rural Investment Act of 2002 ("COOL").

First, we would like to congratulate the Agricultural Marketing Service ("AMS") for the excellent work put into the Interim Final Rule ("Rule"). It is clear that AMS took into consideration the many comments regarding the proposed regulations in an effort to make the Rule a workable implementation of COOL. We also appreciate the efforts of AMS in granting a grace period for implementation of the Rule, which should allow processors the time needed to comply.

We would like to make a few comments and suggestions regarding the Rule.

First, we believe Section 60.200(g)(2) creates confusion when analyzed in connection with the processed item exclusion in Section 60.119. 60.220(g)(2) states, in part, "if a covered commodity was imported from country X and subsequently substantially transformed (as established by US Customs and Border Protection) in the U.S. or aboard a U.S. flagged vessel, such product shall be labeled at retail as "From Country X, processed in the United States." For example, applying the generally understood definition of "substantial transformation" from U.S. Customs (a process resulting in an item with a new name, character and use different from that which existed prior to the processing), our shrimp that is imported strictly for manufacturing and then breaded in the United States could be considered "substantially transformed" and included in COOL.

However, Section 60.119 defines a processed item (and therefore excluded from COOL) as, in part, an item that has "undergone a specific processing resulting in a change in the character of the covered commodity, or that has been combined with at least one other covered commodity or other substantive food component (e.g. breading, tomato sauce)..." Examples of excluded products in the Rule include coconut shrimp and breaded shrimp. We believe that this does not comport with our understanding of Section 60.200 and the "substantial transformation" rule in that section.

As a result of this uncertainty, Phillips participated in a conference call coordinated by the National Fisheries Institute ("NFI") and Barry Carpenter of USDA on October 7, 2004. Phillips was advised by Mr. Carpenter that Section 60.220(g)(2) is intended for the scenario where an animal is born in one country and subsequently shipped to another country, and not for items such as shrimp that are imported into the United States and substantially transformed into other products.

We suggest making the following change to Section 6.200(g)(2): "**except as provided in Section 60.119,** if a covered commodity was imported from country X and subsequently substantially transformed ...." We believe that this will clarify matters and carry out the intent of the Rule, which is to exclude items such as canned seafood and breaded shrimp that are processed.

We also note that there have been several comments requesting the re-inclusion of processed items, such as canned salmon and breaded products, in the Rule. We strongly disagree with these comments. These types of products have long been considered by US governmental agencies such as the Food and Drug Administration as "processed" and should remain excluded by COOL. According to the Federal Food, Drug and Cosmetic Act, 21 U.S.C. Section 321(gg), "processed food" is defined as "any food other than a raw agricultural commodity and includes any raw agricultural commodity that has been subject to processing, such as canning, cooking, freezing, dehydration, and milling." FDA has further interpreted the term "processed food" as any "canning, freezing, cooking, pasteurization or homogenization, irradiation, milling, grinding, chopping, slicing, cutting or peeling of a food."

In conclusion, we suggest the following:

- Clarify that the "substantial transformation" rule in Section 60.200(g)(2) does not apply to the processed item exclusions in Section 60.119.
- Keep in place the current exclusions from COOL for canned and breaded seafood.

We appreciate the opportunity to comment on the Rule and are available to discuss this in more detail as requested.

Yours sincerely,

Melissa S. Sellers

Melissa S. Sellers
General Counsel